

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON/GREENWOOD DIVISION

Christopher Gene Martin,)	
)	Civil Action Nol: 8:12-00300-MGL
Plaintiff,)	
)	
vs.)	
Ellya Odame,)	ORDER AND OPINION
)	
Defendant.)	
_____)	

Plaintiff Christopher Gene Martin (“Plaintiff”), a state prisoner proceeding pro se, filed this action on February 2, 2012 pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. Defendant Ellya Odame denies Plaintiff’s allegations and has filed a motion for summary judgment. In accordance with 28 U.S.C. § 626(b)(1) and Local Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling.

On September 19, 2002, Magistrate Judge Austin issued a Report and Recommendation (“Report”) recommending that the case be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. (ECF No. 42.) Plaintiff has not responded to Defendant’s motion for summary judgment or the Court’s order requiring him to respond. (ECF Nos. 38, 39.) The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The Court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need

not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

No objections were filed to the Report and Recommendation. The Report and Recommendation was mailed to Plaintiff on September 19, 2012. (ECF No. 43.) On October 3, 2012, the Report and Recommendation was returned to the Court as undeliverable, and the envelope stated “Not Deliverable as Addressed.” and “Unable to Forward”. (ECF No. 44.)

Upon thorough review of the record, the Court concurs with the Magistrate Judge's recommendation that the case be dismissed pursuant to Fed.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with the orders of this Court. Accordingly, the Report and Recommendation of the Magistrate Judge is accepted and this action is DISMISSED.

IT IS SO ORDERED.

s/ Mary G. Lewis
United States District Judge

October 11, 2012
Spartanburg, South Carolina